THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10049 of 2007

Dated: 26-06-2007

Between:

Mustur Manohar Narayanamma.

..... PETITIONER

AND

The District Collector, Nellore District, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10049 of 2007

ORDER:

The petitioner is the owner of residential premises bearing Door No.12-55 situated at Railway Station Road, Mutyalapeta, Gudur, Nellore District. Action was initiated under the Andhra Pradesh Land Encroachment Act, 1905 (the Act, for brevity). Notice dated 11.11.2006 under Section 7 of the Act was issued. Assailing the same, the petitioner filed W.P.No.1736 of 2007, *inter alia,* on the ground that the notice is defective and is not in accordance with Appendix XXXII of BSO No.26 of the Andhra Pradesh Board Standing Orders. This plea was accepted and this Court set aside the notice dated 11.11.2007 issued under Section 7 of the Act giving liberty to the Tahsildar to take necessary action in accordance with law. Thereafter another notice was issued under Section 7 of the Act on 16.02.2007. The petitioner submitted explanation, *inter alia,* contending that the land in her occupation is not the Government land and that she is not an encroacher of the Government land. She claimed absolute title in respect of the land. Overruling the objections, the Tahsildar passed orders on 05.05.2007 under Section 6 of the Act directing the petitioner to remove the encroachment and further directing the subordinate officials to take possession of the land after evicting the petitioner. This order is assailed in this writ petition.

The learned counsel for the petitioner placed strong reliance on the decision of the Supreme Court in **Govt. of A.P. v. Thummala Krishna Rao**[1] in support of the contention that when there is a dispute regarding ownership and title of the land between the Government and the alleged encroacher, the remedy of the Government is to file a suit for declaration and resort to the Act is not permissible. The submission is misplaced. Admittedly this is second round of litigation and no such plea was raised in the earlier round of litigation. This Court, however, adds that the principle laid down in **Thummala Krishna Rao**'s case supra is not such an inflexible rule. This was explained by this Court in **Raidurg Co-op. House Building Society Ltd.,. v. Govt. of A.P.**[2] and **Mahavir Pershad v. Collector, Hyderabad District**[3]. Therefore, this Court cannot countenance the submission of the learned counsel for the petitioner. Further the petitioner has an effective alternative remedy by way of appeal under Section 10 of the Act before the jurisdictional Revenue Divisional Officer. As the petitioner has not availed the remedy of appeal,

this Court is not inclined to accept the writ petition. However, liberty is reserved to the petitioner to file appeal within a period of one week from the date of receipt of a copy of this order. To enable the petitioner to obtain appropriate interim orders from the appellate authority, there shall be *status quo* for a period of ten days from today.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

26th June, 2007

Note: Issue cc by Tomorrow.

B/o

ghn

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[1] AIR 1982 SC 1081

[2] 2003(3) ALD 2

[3] 2006(6) ALT 687